

51



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 25

Application Number: 09/739,619
Filing Date: December 20, 2000
Appellant(s): KIMATA ET AL.

Laura Moskowitz
For Appellant

MAILED

MAY 27 2004

Technology Center 2600

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4-9-2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

Art Unit: 2643

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is deficient because it is not a summary of the appellant's invention, but rather a description of the drawings. The real summary of the invention is shown on pages 3-4 of the appellant's specification and the Board's attention is respectfully directed to pages 3-4 of appellant's specification for a correct summary of the invention.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that Group I: claims 1, 2, 4-11, 13-17, and 9-21 stand or fall together and Group II: claims 3, 12, and 18 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,786,846

Hiroaki et al.

7-28-1998

Art Unit: 2643

JP363276352A	Ota	11-14-1988
EP 0884905A2	Leppisaari et al	12-16-1998
JP356152387A	Kobayashi et al.	11-25-1981

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2, are rejected under 35 U.S.C 102(b) as being anticipated by Hiroaki (US PAT: 5,786,846).

Regarding claim 1, Hiroaki discloses a picture-phone device for an operator to exchange images and voices with the party on the other end via a communication circuit comprising: an imaging portion (602, fig. 6), an image display portion (603, fig. 6), and means (102, fig. 6) for guiding the line of sight for guiding the operator's line of sight toward the imaging portion (602) (col. 13 lines 29-67, col. 14 lines 1-26, figs. 13A, 13B, col. 16 lines 14-21).

Art Unit: 2643

Regarding claim 2, Hiroaki further teaches the following: indicating means for giving indications to the operator for guiding operator's line of sight (figs. 13A, 13B, col. 16 lines 14-21).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroaki in view of Ota (JP363276352A).

Regarding claim 3, Hiroaki teaches control means (102, fig. 8) for controlling indicating means (502, fig. 8) in response to the result of the determination of the phone in use which is implicit (col. 13 lines 42-55, figs. 13A, 13B, col. 16 lines 14-21); but he does not explicitly teach the following: determining whether the phone is in use or not according to a voice input signal output from a microphone.

However, Ota discloses automatic voice dial telephone terminal equipment which teaches determining whether the phone is in use or not according to a voice input signal output from a microphone (see abstract).

Art Unit: 2643

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Hiroaki's system to provide for determining whether the phone is in use or not according to a voice input signal output from a microphone as this would provide another means to determine phone in use.

Regarding claims 4-8, Hiroaki further teaches the following: indicating means is a light flashing system for guiding the operator's line of sight by light emission, light flashing system is provided near the imaging portion (col. 9 lines 35-42), indicating means is a caption outputting system for projecting a special visual image in order to guide the operator's line of sight (col. 14 lines 46-57, col. 16 lines 14-21), special visual image is an arrow for pointing to the imaging portion (figs. 13A/13B, col. 15 lines 53-56, col. 16 lines 19-23), a special image is variation of characters, patterns or backgrounds in order to guide the operator's line of sight toward the imaging portion (figs. 9-13, note: all these figures give information to guide operator's line of sight to have proper display of both the remote user and local user in video communication, note: col. 14 lines 5-26).

Regarding claim 9, Hiroaki further teaches the following: the imaging display portion comprising: an inner display field (902, fig. 10) and an outer frame portion (1001, fig. 10, col. 14 lines 26-42).

5. Claim 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroaki in view of Leppisaari et al. (EP 0884905A2, hereinafter Leppisaari).

Art Unit: 2643

Regarding claim 10, Hiroaki does not explicitly teach the following: imaging portion is disposed with respect to the outer frame portion.

However, Leppisaari discloses a method for producing an image to be transmitted from a terminal and the terminal which teaches the following: imaging portion is disposed with respect to the outer frame portion (fig. 3, page 4 lines 34-35).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Hiroaki's system to provide for the following: imaging portion is disposed with respect to the outer frame portion as this arrangement would provide one of the methods, among many methods possible, to locate imaging portion as taught by Leppisaari.

Regarding claim 11, Hiroaki further teaches the following: means for guiding operator's line of sight comprises: indicating means for giving indication to the operator for guiding the operator's line of sight (col. 16 lines 14-21).

6. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroaki in view of Leppisaari as applied to claim 11 above, and further in view of view of Ota.

Regarding claim 12, the combination teaches control means (102, fig. 8) for controlling indicating means (502, fig. 8) in response to the result of the determination of

Art Unit: 2643

the phone in use which is implicit (col. 13 lines 42-55, figs. 13A, 13B, col. 16 lines 14-21 of '846); but it does not explicitly teach the following: determining whether the phone is in use or not according to a voice input signal output from a microphone.

However, Ota discloses automatic voice dial telephone terminal equipment which teaches determining whether the phone is in use or not according to a voice input signal output from a microphone (see abstract).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify the combination to provide for determining whether the phone is in use or not according to a voice input signal output from a microphone as this would provide another means to determine phone in use..

Regarding claims 13-15, the combination teaches the following: indicating means is a light flashing system for guiding the operator's line of sight by light emission (col. 9 lines 35-42 of '846), indicating means is a caption outputting system for projecting a special visual image in order to guide the operator's line of sight (col. 14 lines 46-57, col. 16 lines 14-21 of '846), the special visual image is one of the following: an arrow, a variation of characters, patters or backgrounds in order to guide operator's line of sight (figs. 9-13, note: all these figures give information to guide operator's line of sight to have proper display of both the remote user and local user in video communication, note: col. 14 lines 5-26 of '846).

Art Unit: 2643

7. Claims 16-17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroaki in view of Kobayashi (JP35615287A).

Regarding claim 16, Hiroaki does not teach the following: imaging portion is disposed behind the inner display field.

However, Kobayashi discloses a video telephone device which teaches the following: imaging portion (6, fig. 2a) is disposed behind the inner display field (3, see abstract).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Hiroaki's system to provide for the following: imaging portion is disposed behind the inner display field as this arrangement would provide one of the methods, among many methods possible, to locate imaging portion as taught by Kobayashi.

Regarding claim 17, Hiroaki further teaches the following: indicating means for giving indications to the operator for guiding the operators's line of sight (figs. 13A-13B, col. 16 lines 14-21).

8. Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroaki in view of Kobayashi as applied to claim 16 above, and further in view of Ota.

Regarding claim 18, the combination teaches the following: the combination teaches control means (102, fig. 8) for controlling indicating means (502, fig. 8) in response to the result of the determination of the phone in use which is implicit (col. 13

Art Unit: 2643

lines 42-55, figs. 13A, 13B, col. 16 lines 14-21 of '846); but it does not explicitly teach the following: determining whether the phone is in use or not according to a voice input signal output from a microphone.

However, Ota discloses automatic voice dial telephone terminal equipment which teaches determining whether the phone is in use or not according to a voice input signal output from a microphone (see abstract).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify the combination to provide for determining whether the phone is in use or not according to a voice input signal output from a microphone as this would provide another means to determine phone in use.

Regarding claims 19-21, the combination teaches the following: indicating means is a light flashing system for guiding the operator's line of sight by light emission (col. 9 lines 35-42 of '846), indicating means is a caption outputting system for projecting a special visual image in order to guide the operator's line of sight (col. 14 lines 46-57, col. 16 lines 14-21 of '846), the special visual image is one of the following: an arrow, a variation of characters, patterns or backgrounds in order to guide operator's line of sight (figs. 9-13, note: all these figures give information to guide operator's line of sight to have proper display of both the remote user and local user in video communication, note: col. 14 lines 5-26 of '846).

(11) Response to Argument

Rejection of claims 1 and 2 under 35 U.S.C 102(b) as being anticipated by Hiroaki (US PAT: 5,786,846): Regarding rejection of claim 1, Appellant argues, paragraph one, page 7 of his appeal brief that "Contrary to the assertion of the Examiner, a notification of an operator is within the shoot range of camera and indication to guide the operator to move his body into shoot range does not teach or suggest guiding operator's line of sight to a camera".

Notwithstanding Appellant's interpretation of Hiroaki reference to promote his argument, Hiroaki clearly indicates his system is designed to provide face to face conversation which means line of sight is maintained between the participants of the video conference by remaining in the shoot range of the camera (col. 1 lines 9-14, col. 3 lines 21-27, col. 6 lines 57-63).

Appellant further argues, paragraph one, page 7 of his appeal brief that "In fact, based on disclosure of Hiroaki, which describes indicators on the screen directing the operator to move his body, it would be natural for the operator to have his line of sight directed to the screen, so that he can identify in which direction he should move". Regarding this, it was disingenuous for the Appellant to make this argument in that his invention also displays an arrow (150, fig. 1) for directing the caller's line of sight to the direction of camera (page 5 lines 21-24 of Appellant's specification). Hiroaki discloses the indicator on the screen to indicate to the user he is outside the shoot range of camera (fig. 13 A) just as Appellant system does. If Appellant's above argument is taken to its logical conclusion, operator's line of sight in his system also will be looking at the screen because it is where indicator is displayed for the operator for guiding his line of sight. Appellant further argues, paragraph one, page 7 of his appeal brief, that "Because Hiroaki fails to teach or suggest guiding the operator's line of sight to camera, based on the

Art Unit: 2643

disclosure of Hiroaki, if an operator did direct his gaze to the camera, it would be completely incidental to, and not as a result of anything taught or suggest by Hiroaki". Regarding this argument, it suggests that Appellant has reached his own conclusion on what Hiroaki reference does teach or does not teach in order to promote his arguments. However, as pointed out above, Hiroaki teaches video conference system for realizing spontaneous face to face conversation by users of the system (col. 3 lines 21-27). Hiroaki further teaches system which results in smooth and natural communication with a remote user by guiding the operator to remain in camera's shoot range (col. 1 lines 9-14). Further, Hiroaki teaches system which gives the user guidance to move by certain amount by certain direction to remain in the camera shoot range so that smooth and natural communication with a remote user can be realized (figs. 13A, 13B, col. 16 lines 14-21). As can be discerned from Hiroaki teachings put forth above, Hiroaki clearly teaches limitations of Appellant's claim 1.

Appellant further argues, paragraph 2 of page 7 of his appeal brief, that "the Examiner errs in his assertion that Hiroaki discloses a goal of achieving good eye contact. In fact, neither the portion of Hiroaki reference referred to be the Examiner, nor any other portion of Hiroaki discusses eye contact". Regarding this, Hiroaki discloses that it is an object of his invention to provide user interface for realizing spontaneous face-to-face conversation by sending and receiving video (col. 3 lines 21-26). This means that when having face-to-face conversation, eye contact is natural. Hiroaki further discloses that his system promotes smooth and natural communication with the remote user (col. 1 lines 9-14). Here also smooth and natural communication results in eye contact. Hiroaki further refers to people having normal

conversation with the other by facing and eye contacting with each other (col. 17 lines 1-6) and further discloses a system to realize this (col. 17 lines 29-38). Therefore, contrary to appellant's allegations, Hiroaki clearly teaches eye contact through references to face-to-face conversation, smooth and natural conversation.

In paragraph 1 page 8 of his appeal brief, Appellant discusses line of sight and argues that "In case of the present invention, as recited in claim 1, the line of sight is an imaginary line between the operator's eyes and imaging portion. In this way, according to claim 1, the operator is directed to look at the camera while the phone conversation is taking place. As discussed, Hiroaki fails to mention eye contact, a line of sight of an operator, or any direction in which operator looks other than at the screen. As mentioned, according to Hiroaki, the arrows displayed to the operator only to indicate a direction in which operator should move his body in order to place himself within the shoot range of the camera, they do not indicate direction in which he should look". Regarding this, notwithstanding the Appellant's interpretation of Hiroaki reference to promote his contrary argument to the teachings of the reference, as mentioned earlier, Hiroaki reference discloses that it is an object of his invention to provide user interface for realizing spontaneous face-to-face conversation by sending and receiving video (col. 3 lines 21-26). This means that when having face-to-face conversation, eye contact is natural which means line of sight between users of the system which implies looking at the imaging system. Otherwise eye contact or face-to-face conversation is not feasible and cannot be obtained. Hiroaki further discloses that his system promotes smooth and natural communication with the remote user (col. 1 lines 9-14). Here also smooth and natural communication results in eye contact, which means line of sight between users of the system, which implies looking at the

imaging system. Otherwise eye contact or face-to-face conversation is not feasible and cannot be obtained. Hiroaki further refers to people having normal conversation with the other by facing and eye contacting with each other (col. 17 lines 1-6) and further discloses a system to realize this (col. 17 lines 29-38). Further, with reference to Hiroaki and its teachings appellant constantly harps on operator moving his body in response to arrows displayed on display to urge the operator to move in the right direction to be in the shoot range of the camera as if user of the Hiroaki system has no face and only body. This is contrary to the Hiroaki's teachings. As illustrated in figs 13, when the local user deviates from the shoot range (of camera), the information showing the guide for resuming is also displayed. The information tells the local user to move a certain amount in a certain direction so that the user, inherently user's face, is in shoot range of the camera to have smooth and natural conversation (col. 16 lines 13-21, col. 1 lines 9-14). In light of the explanation provided with reference to Hiroaki reference, Hiroaki clearly teaches the limitation of claim 1 of appellant's and therefore Hiroaki clearly anticipates claim 1 of the appellant.

Applicant further argues, in second paragraph of pages 8-9 of his appeal brief, that "contrary to the assertion of the Examiner, moving into the shoot range of the camera, as directed by Hiroaki, does not inherently achieve a line of sight between an operator and camera, thus establishing eye contact between the operator and a third party at the end of the communication. The line of the operator ... an operator could be looking at the camera, but not be situated within the shoot range of the camera". Regarding this, as set forth earlier, repeated here, notwithstanding the Appellant's interpretation of Hiroaki reference to promote his contrary argument to the teachings of the reference, Hiroaki reference discloses that it is an object of his

invention to provide user interface for realizing spontaneous face-to-face conversation by sending and receiving video (col. 3 lines 21-26). This means that when having face-to-face conversation, eye contact is natural which means line of sight between users of the system which implies looking at the imaging system. Otherwise eye contact or face to face conversation is not feasible and cannot be obtained. Hiroaki further discloses that his system promotes smooth and natural communication with the remote user (col. 1 lines 9-14). Here also smooth and natural communication means eye contact, which means line of sight between users of the system, which implies looking at the imaging system. Otherwise eye contact or face-to-face conversation is not feasible and cannot be obtained. Hiroaki further refers to people having normal conversation with the other by facing and eye contacting with each other (col. 17 lines 1-6) and further discloses a system to realize this (col. 17 lines 29-38). In light of the explanation provided with reference to Hiroaki reference, Hiroaki clearly teaches the limitation of claim 1 of appellant's and therefore Hiroaki clearly anticipates claim 1 of the appellant.

Rejection of claims 3-7, 8, under 35 U.S.C 103(a) as being obvious over Hiroaki in view of Ota (JP363276352A): Regarding rejection of claim 3 under above combination, Appellant argues in last paragraph pages 9-10 of his appeal brief that "Ota fails to teach or suggest any imaging portion, image display portion, or means for guiding operator's line of sight, as required by claim 1 of the present application. Consequently, one does not remedy ... reasonable combination, if any, of Hiroaki and Ota fails to teach or suggest all of the limitations of claim 1". Regarding this, Appellant's attention is drawn to the fact that it is 35 U.S.C 103(a) rejection and Ota reference is used for its teaching: determining whether the phone is in use or not according to a

Art Unit: 2643

Hiroaki reference while the rest of the system is taught by Hiroaki. The combination of Hiroaki and Oto teaches the Appellants claim 3 as set forth in the final office action which is repeated above under grounds for rejection. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, Appellant's arguments regarding rejection of claims 4-9 tied to their dependency on independent claim 1. As set forth above in response to Appellant's arguments with reference to independent claim 1, independent claim 1 is not patentable because Hiroaki teaches its claim limitations as set forth above. Therefore, rejection of claims 4-9, is valid as set forth in the final office action which is repeated above under grounds for rejection.

Rejection of claims 10-11 under 35 U.S.C 103(a) as being obvious over Hiroaki in view of Leppisaari et al. (EP 0884905A2, hereinafter Leppisaari): Regarding rejection of claim 10, Appellant argues in first paragraph of page 11 of his appeal brief that "Still, Leppisaari, like Hiroaki and Ota, fails to teach or suggest means for guiding an operator's line of sight, as required by claim 1. As described with respect to Hiroaki, directing an operator ... does not teach or suggest guiding an operator's line of sight toward an imaging portion, as required by claim 1". Regarding this, Appellant's attention is drawn to the fact that it is 35 U.S.C 103(a) rejection and Leppisaari reference is used for its teaching: imaging portion is disposed with respect to the outer frame portion (fig. 3, page 4 lines 34-35) which is not taught by Hiroaki while rest of the

system is taught by Hiroaki. The combination of Hiroaki and Oto teaches the Appellants claim 10 as set forth in the final office action which is repeated above under grounds for rejection. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Appellant's arguments regarding rejection of claims 10-11 tied to their dependency on independent claim 1. As set forth above in response to Appellant's arguments with reference to independent claim 1, independent claim 1 is not patentable because Hiroaki teaches its claim limitations as set forth above. Therefore, rejection of claims 10-11, is valid as set forth in the final office action which is repeated above under grounds for rejection.

Rejection of claims 12-15, under 35 U.S.C 103(a) as being obvious over Hiroaki in view of Leppisaari as applied to claim 11 above, and further in view of view of Ota: Regarding rejection of claims 12-15, Appellant's arguments are tied to tied to their dependency on independent claim 1. As set forth above in response to Appellant's arguments with reference to independent claim 1, independent claim 1 is not patentable because Hiroaki teaches its claim limitations as set forth above. Therefore, rejection of claims 10-11, is valid as set forth in the final office action which is repeated above under grounds for rejection.

Rejection of claims 16-17, under 35 U.S.C 103(a) as being obvious over Hiroaki in view of Kobayashi (JP35615287A): Regarding rejection of claims 16, Appellant

argues in the last paragraph of pages 11-12, that "However, Kobayashi, like Hiroaki, Ota, and Leppisaari, fails to teach or suggest means for guiding operator's line of sight toward imaging portion, as required by claim 1. According to Kobayashi, there is no direction ... it would be impossible for an operator to see camera if seated in front of the display screen". Regarding this, Appellant's attention is drawn to the fact that it is 35 U.S.C 103(a) rejection and Kobayashi reference is used for its teaching: imaging portion (6, fig. 2a) is disposed behind the inner display field (3, see abstract) which is not taught by Hiroaki while rest of the system is taught by Hiroaki. The combination of Hiroaki and Kobayashi teaches the Appellants claim 10 as set forth in the final office action which is repeated above under grounds for rejection. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Appellant's arguments regarding rejection of claims 16-17, 19-21, are tied to their dependency on independent claim 1. As set forth above in response to Appellant's arguments with reference to independent claim 1, independent claim 1 is not patentable because Hiroaki teaches its claim limitations as set forth above. Therefore, rejection of claims 16-17, 19-21 is valid as set forth in the final office action which is repeated above under grounds for rejection.

Regarding rejection of claims 3, 12, 18 under 35 U.S.C 103(a) as being obvious over Hiroaki, Ota, Leppisaari, and Kobayashi: regarding rejection of claims 3, 12, and 18, Appellant argues in first paragraph of page 13 of his appeal brief that " Each of

claims 3, 12, and 18 require a determination of whether a picture-phone is in use based on voice input signal from the microphone". Regarding this, Examiner rejected these claims (3, 12, 18) under 35 U.S.C 103(a) as being obvious in view of Ota. Each of these claims, as stated by the Appellant above calls for determination of whether a picture-phone is in use based on voice input signal from the microphone. Ota basically discloses a system where user inputs the name of the opposite party in voice from a microphone 11, then an audio analysis system analyses the voice pattern and an automatic recognition means (13) retrieves the information of address and is outputted to display, and display shows the name of the opposite called party (fig. 2, and abstract). The fact microphone input is analyzed and necessary information is displayed based on the microphone input in Oto's system implies that determining whether phone is in use or not in that if the phone is not in use, there is no display of output even after voice input and there is output of display only when phone is in use in response to input from the microphone. Therefore combination of Hiroaki, Ota, Leppisaari, and Kobayashi teaches the Appellant's claim limitation of claims 3, 12, and 18 as set forth in the final office action which is repeated above under grounds for rejection.


Conclusion

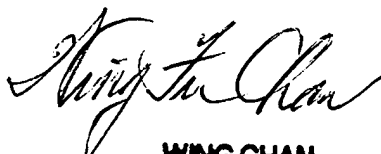
For the above reasons, the examiner respectfully submits that a ***prima facie*** case of anticipation and obviousness of the claimed invention is set forth in the Final Office action under 35 U.S.C 102(b) and 35 U.S.C 103(a) and Appellant(s) have failed to overcome the a ***prima facie*** case of anticipation and obviousness of the claimed


Art Unit: 2643

invention under 35 U.S.C 102(b) and 35 U.S.C 103(a). Accordingly, it is believed that final rejection under 35 U.S.C 102(b) and 35 U.S.C 103(a) is proper and Board of Patent Appeals and interferences is therefore urged to affirm Examiner's rejection(s).

Respectfully submitted


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